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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANT: Reber

ATTY. DOCKET NO.: HOB-P-04-001

SERIAL NO.: 10/771,890

GROUP ART UNIT: 3625

DATE FILED: February 4, 2004

EXAMINER: Allen

INVENTION: "A SYSTEM AND A METHOD FOR LOCATING AN ITEM OFFERED  
FOR SALE BY A MERCHANT"

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF TRANSMITTAL

SIR/MADAM:

Appellant submits herewith Appellant's Reply Brief in response to the Examiner's Answer dated November 23, 2007.

Appellant submits that no fee is required for submission of this Reply Brief. However, the Patent Office is hereby authorized to charge any additional fees which may be required, or to credit any overpayment to Deposit Acct. No. 50-0595. A duplicate of this sheet is enclosed for this purpose.

Respectfully submitted,

(Reg. No. 35,018)

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APPELLANT'S REPLY BRIEF

SIR/MADAM:

This Reply Brief is submitted in response to the Examiner's Answer dated November 23, 2007. In the Examiner's Answer, the Examiner raised at least two new points of argument.

# **I. STATUS OF CLAIMS**

Claims 1-20 are pending in this patent application. A copy of the claims is appended hereto in the Claims Appendix. Claims 1-20 were finally rejected in an Office Action dated March 23, 2007 and are hereby on appeal.

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Would Claims 1-3, 8-11, 13, 15 and 18 have been obvious under 35 U.S.C. §103(a) to one having ordinary skill in the art at the time of Appellant's invention over *Chang et al.* (U.S. Patent Publication No. 2003/0110078) in view of *Russell* (U.S. Patent Publication No. 2002/0083061)?

2. Would Claims 4, 5, 7, 12, 14, 17, 19 and 20 have been obvious under 35 U.S.C. §103(a) to one having ordinary skill in the art at the time of Appellant's invention over *Chang et al.* in view of *Russell* as applied to Claims 1 and 8, and further in view of *Pugliese III et al.* (U.S. Patent Publication No. 2001/0044751)?

3. Would Claims 6 and 16 have been obvious under 35 U.S.C. §103(a) to one having ordinary skill in the art at the time of Appellant's invention over *Chang* in view of *Russell* and further in view of Crossman, Craig, ("Look, Listen and Interact with Multimedia." *Austin American Statesman* March 21, 1994, Page D6; (hereinafter "892u"))?

### III. ARGUMENT

#### A. THE LANGUAGE OF CLAIM 1 PATENTABLY DISTINGUISHES CLAIM 1 FROM THE CITED REFERENCES

In the Examiner's Answer, the Examiner alleges that Appellant's arguments regarding Claim 1 fail to comply with 37 CFR §1.111(b) because they amount to a general allegation that Claim 1 defines a patentable invention without specifically pointing out how the language of the claim patentably distinguishes Claim 1 from the references. In response, Appellant respectfully submits that Claim 1 is patentably distinguishable from the references.

Independent Claim 1 requires a means for inputting merchant information and item information wherein the merchant information is associated with the location of the plurality of merchants within a multi-dealer retail establishment defined by walls and an interior space wherein the availability and the location of the item are determined only within the interior space of the multi-dealer retail establishment. On page 5 of the Final Rejection, the Examiner notes that *Chang et al.* lack an explicit teaching of a means for inputting merchant information and a means for inputting item information.

In addition, *Russell* merely teaches a method of compiling database information onto a CD and distributing the CD for use at a tradeshow ([0010], lines 2-5). The information includes a vendor's products, web site address, catalogue information, or its

location at the show, and is collected prior to or during the tradeshow ([0009], lines 5-9).

On the contrary, Appellant's invention requires a retail environment, not a tradeshow as in *Russell*. In addition, *Russell* teaches away from Appellant's invention because individuals attend a tradeshow to learn about products that are newly launched and are not available for purchase; Appellant's invention is used for individuals who are, in fact, purchasers. Therefore, neither *Chang et al.* nor *Russell*, taken singly or in combination, teaches or suggests a means for inputting merchant information and item information wherein the merchant information is associated with the location of the plurality of merchants within a multi-dealer retail establishment defined by walls and an interior space wherein the availability and the location of the item are determined only within the interior space of the multi-dealer retail establishment, as required by independent Claim 1.

Independent Claim 1 further requires a computer terminal located within a multi-dealer retail establishment defined by walls and an interior space that allows a user to search for items for sale within the multi-dealer retail establishment. *Chang et al.* merely teach a system 10 which includes a broadcast receiver 12 and a shopping computer or kiosk 14 ([0017], lines 2-4). The broadcast receiver 12 receives detailed product or service information from broadcast advertising that may include product type, model number,

universal product code, price, brand name, country of manufacture, product availability, service provider, cost of service and availability of service ([0019], lines 12-16). A user saves the product information on a portable memory media 20 and inserts the portable memory media 20 into the mall shopping computer 14 which then communicates to the user which stores in the mall the products on the portable memory media 20 are found ([0025], lines 1-10).

Further, *Russell* merely teaches that dedicated computer systems are provided at a tradeshow for users to perform a search on a database containing tradeshow product information ([0010], lines 8-10). The shopping computer in *Chang et al.* does not allow a user to search for products available for sale within a multi-dealer retail establishment, as required by Claim 1. Further, the products in *Russell* are tradeshow items for demonstration and exhibition, whereas Appellant's claimed invention requires items for sale within a multi-dealer retail establishment. Still further, *Russell* teaches away from Appellant's invention because an individual attends a tradeshow to learn about products not available for purchase, and not to purchase products as taught by Appellant's invention. Therefore, neither *Chang et al.* nor *Russell*, taken singly or in combination, teaches or suggests a computer terminal located within a multi-dealer retail establishment defined by walls and an interior space that allows a user to search for items for sale within the multi-dealer retail

establishment, as required by independent Claim 1.

Moreover, independent Claim 1 requires a computer terminal that may access a separately-located database that contains merchant information and item information wherein the merchant information is associated with the location of the plurality of merchants within a multi-dealer retail establishment defined by walls and an interior space wherein the availability and the location of the item are determined only within the interior space of the multi-dealer retail establishment. In *Chang et al.*, a user saves the product information on a portable memory media 20 and inserts the portable memory media 20 into the mall shopping computer 14 which then communicates to the user which stores in the mall the products on the portable memory media 20 are found ([0025], lines 1-10).

Further, *Russell* merely teaches a dedicated computer system that is provided at a tradeshow for users to perform a database search on tradeshow products to obtain a copy of the search results ([0010], lines 2-10). Unlike Appellant's invention, the tradeshow products in *Russell* are not part of a retail environment. Moreover, the portable memory media in *Chang et al.* is accessed locally and is not separately-stored from the shopping mall. In addition, *Russell* teaches away from Appellant's invention because individuals attend a tradeshow to learn about products that are newly launched and are not available for purchase; Appellant's



invention is used for individuals who are, in fact, purchasers. Therefore, nowhere do *Chang et al.* and *Russell*, taken singly or in combination, teach or suggest a computer terminal that may access a separately-located database that contains merchant information and item information wherein the merchant information is associated with the location of the plurality of merchants within a multi-dealer retail establishment defined by walls and an interior space wherein the availability and the location of the item are determined only within the interior space of the multi-dealer retail establishment, as required by independent Claim 1.

Accordingly, Appellant respectfully requests that the rejection of Claim 1 under 35 U.S.C. §103(a) as unpatentable over *Chang et al.* in view of *Russell* be withdrawn for at least the reasons above.

**B. CHANG ET AL. AND RUSSELL DO NOT CONSTITUTE ANALOGOUS ART**

In the Examiner's Answer, the Examiner alleges that *Chang et al.* and *Russell* are analogous art to the claimed invention because the references both pertain directly to multi-dealer venues with product and locator vending means. The Examiner further alleges that *Chang et al.* and *Russell* are both pertinent to the problem that Appellant is trying to solve. In response, Appellant respectfully contends that *Chang et al.* and *Russell* are non-analogous art to Appellant's claimed invention.

*Chang et al.* relate to a system and a method for receiving

broadcast advertising. A user extracts product data or service data from the advertising to create a portable shopping list, which is then inputted into a shopping computer at a shopping mall to determine where a particular product is found at the mall. *Russell* relates to a method for providing searchable electronic databases for use in tradeshow. Tradeshow information is compiled into a database which is then stored on a CD or the like and distributed or made accessible to customers at the tradeshow.

On the contrary, Appellant's invention relates to a system and a method for providing information about products or services offered for sale by a merchant located within a multi-dealer retail establishment. *Chang et al.* derives its product information from broadcast advertising embedded in a broadcast signal received at the broadcast receiver ([0019], lines 6 and 7). Appellant's invention requires information from products located only within the interior space of the multi-dealer retail establishment, not from products received from a broadcast receiver as in *Chang et al.* In addition, *Russell* derives its tradeshow information from items not offered for sale, whereas Appellant's invention derives its product information from items offered for sale by a merchant located within the multi-dealer retail establishment. Further, *Russell* teaches away from Appellant's invention because individuals attend a tradeshow to learn about products that are newly launched and are not available for purchase; Appellant's invention is used

for individuals who are, in fact, purchasers. Thus, *Chang et al.* and *Russell* are non-analogous art to Appellant's claimed invention. Accordingly, Appellant respectfully requests that the rejection of Claim 1 under 35 U.S.C. §103(a) as unpatentable over *Chang et al.* in view of *Russell* be withdrawn for at least the reasons above.

In view of the foregoing remarks, Appellant respectfully submits that all of the claims in the application are in allowable form and requests the Board to reverse the rejections of the Examiner.

Respectfully submitted,

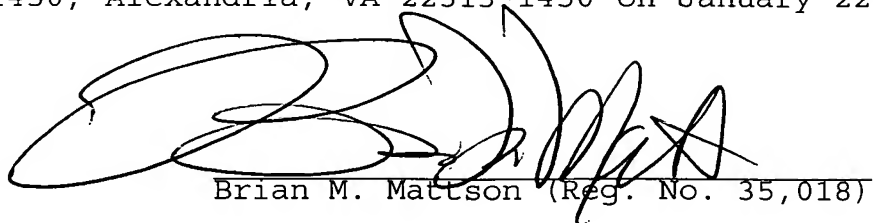


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#### CERTIFICATE OF MAILING

I hereby certify that this **REPLY BRIEF** is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on January 22, 2008.



Brian M. Mattson (Reg. No. 35,018)

#### VIII. CLAIMS APPENDIX

Claim 1: A system for determining an availability and a location of an item offered for sale by a merchant in a multi-dealer retail establishment wherein the multi-dealer retail establishment is a structure defined by walls wherein the walls define an interior space and wherein the availability and the location of the item are determined only within the multi-dealer retail establishment and further wherein the multi-dealer retail establishment has a plurality of merchants wherein each of the plurality of merchants is associated with only one of a plurality of locations within the interior space of the multi-dealer retail establishment and each of the plurality of merchants offers a plurality of items that are a distinct group of items from any other merchant of the plurality of merchants, the system comprising:

- a computer network;

- a database associated with the computer network;

- means for inputting merchant information into the database wherein the merchant information is associated with the location of each one of the plurality of merchants wherein the merchants are located only within the interior space of the multi-dealer retail establishment;

- means for inputting item information in the database wherein the item information is associated with a description of the item and a price of the item wherein each one of the plurality of items

is only locatable within the interior space of the multi-dealer retail establishment; and

a computer terminal located within the interior space of the multi-dealer retail establishment wherein the computer terminal connects to the computer network and enables access to the item information and the merchant information and further wherein the computer terminal is remote with respect to the database and determines the location of the item wherein the item is only locatable within the interior space of the multi-dealer retail establishment by searching the item information in the database wherein the item information is associated with the location of the merchant within the interior space of the multi-dealer retail establishment.

Claim 2: The system of Claim 1 wherein the computer network is the internet.

Claim 3: The system of Claim 1 further comprising:

a remote server wherein the database is contained on the remote server; and

a website providing access to the database.

Claim 4: The system of Claim 1 further comprising:

means for modifying the merchant information in the database.

Claim 5: The system of Claim 1 further comprising:

a password associated with the merchant for accessing the merchant information in the database.

Claim 6: The system of Claim 1 further comprising:

an electronic map associated with the multi-dealer retail establishment wherein the location of the merchant associated with the item information is displayed on the electronic map.

Claim 7: The system of Claim 1 further comprising:

means for inputting an image associated with the item into the item information in the database; and

means for accessing the image associated with the item in the database from the computer terminal.

Claim 8: A method for locating and determining an availability and a location of an item offered for sale by a merchant in a multi-dealer retail establishment wherein the multi-dealer retail establishment is a building having walls defining an interior space wherein the location and the availability of the item are determined only from the items within the interior space of the multi-dealer retail establishment and wherein the merchant is part of a plurality of merchants within the multi-dealer retail establishment and further wherein the merchant offers a plurality of items that are a distinct group of items from any other merchant in the plurality of merchants and further wherein the merchant has a distinct location within the multi-dealer retail establishment, the method comprising the steps of:

providing a computer network;

providing a database connected to the computer network wherein the database stores merchant information associated with the merchant and further wherein the merchant information has the

location of the merchant within the multi-dealer retail establishment;

inputting a product list of the merchant into the merchant information in the database wherein the product list has item information associated with items offered for sale by the merchant wherein the items in the product list are determined only from the items available from the plurality of merchants within the interior space of the multi-dealer retail establishment;

providing a terminal in the multi-dealer retail establishment wherein the terminal access[es] the database for displaying the merchant information of the merchant in the database via the computer network wherein the terminal is only accessible at the multi-dealer retail establishment;

searching the product list in the merchant information based on the item information associated with the item; and

determining the location of the merchant in the multi-dealer retail establishment based on the merchant information associated with the item information in the product list wherein the terminal displays the location of the item in the multi-dealer retail establishment based on the location of the merchant wherein the merchant is only located within the interior space of the multi-dealer retail establishment.

Claim 9: The method of Claim 8 wherein the computer network is the internet.

Claim 10: The method of Claim 8 wherein the access to the database is wireless.

Claim 11: The method of Claim 8 further comprising the steps of:  
providing a remote server; and  
storing the database on the remote server.

Claim 12: The method of Claim 8 further comprising the step of:  
providing a second access to the database for modifying the merchant information in the database via the computer network.

Claim 13: The method of Claim 8 wherein the access is from a remote computer terminal with respect to the database.

Claim 14: The method of Claim 8 further comprising the step of:  
providing a password for accessing the merchant information in the database via the computer system.

Claim 15: The method of Claim 8 wherein the terminal accesses the database is via a computer website on the computer network wherein the computer website is remote with respect to the database.

Claim 16: The method of Claim 8 further comprising the step of:  
displaying the location of the merchant in the multi-dealer retail establishment on a map wherein the map is associated with the multi-dealer retail establishment.

Claim 17: The method of Claim 8 further comprising the step of:  
downloading an image into the item information of the item in the database via the computer network wherein the image is associated with the item.



Claim 18: The method of Claim 8 wherein the item information includes geographical information associated with the item for sale by the merchant.

Claim 19: The method of Claim 8 further comprising the steps of:

inputting user information into the database via the computer system wherein the user information is associated with the user; and

searching the product list in the merchant information based on the user information.

Claim 20: The method of Claim 8 further comprising the steps of:

inputting an inventory of the merchant into the database via the computer system wherein the inventory is associated with the product list of the merchant and further wherein the inventory includes the item for sale; and

modifying the inventory of the merchant via the computer system.